



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

October 22, 1998

C-14J

R.D. Courteau, M.D.
10961 Cove Drive
Onamia, Minnesota 56359

Dear Dr. Courteau:

On behalf of Ms. Gail Ginsberg, I am responding to your letters of July 29 and September 23, 1998, concerning the United States Environmental Protection Agency's ("U.S. EPA") activities relative to the Mille Lacs Band of Ojibwe ("Band").

In your letters, you once again raise the issue of whether the Nelson Act has extinguished the Mille Lacs Reservation. Based on the opinion from the United States Department of Interior, Office of the Solicitor, dated February 28, 1991, which is attached, the Mille Lacs Reservation has not been diminished and the boundaries established by the Treaty of February 22, 1855, 10 Stat. 1165, remain intact. The Supreme Court in Solem v. Bartlett, 465 U.S. 463 (1984), set out the analytical framework for distinguishing those surplus land acts, such as the Nelson Act, that diminished reservations from those acts that simply offered non-Indians the opportunity to purchase land within reservation boundaries. The Court reasoned,

Only Congress can divest a reservation of its land and diminish its boundaries... Diminishment...will not be lightly inferred...Congress must clearly evince an "intent...to change...boundaries" before diminishment will be found...When both an Act and its legislative history fail to provide substantial and compelling evidence of a Congressional intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening.

Id. at 470, 472. Consequently, because the Nelson Act did not evince specific Congressional intent to diminish the boundaries of the Mille Lacs Reservation, its boundaries were not extinguished. Indeed, in both the Act of July 22, 1890, 26 Stat. 290, and the Act of May 27, 1902, 32 Stat. 268, Congress referred to the rights of Indians within the Mille Lacs Reservation. In fact, the 1902 Act offered the Band inducements to leave the Reservation. If the Nelson Act extinguished the reservation, there is nothing in the Acts following the passage of the Nelson Act which shows such Congressional intent.

You appear to raise the Nelson Act because of its reference in the Supreme Court's decision in Cass County, Minnesota, et al. v. Leech Lake Band of Chippewa Indians, 118 S.Ct. 1904 (1998). However, the Supreme Court's decision in the above case does not deal in any way with reservation boundary issues; rather, it deals with the taxation of repurchased allotted land. In describing the history of the Leech Lake Band of Chippewa Indians, the Court explains the impact of the Nelson Act on Minnesota Chippewa reservations. However, the issue of whether the Nelson Act extinguished the Leech Lake Reservation, or any other Indian reservation in Minnesota, was not before the Court. In any event, one would not be led to such a conclusion as the Court recognizes the existence of the Leech Lake Reservation stating that it "today" encompasses 588,684 acres. Accordingly, the Supreme Court's decision in this case does not stand for the proposition that the Band's--or any other tribes'--reservation boundaries were extinguished by the Nelson Act.

Additionally, it is important to note the decision in Leech Lake Band v. Minnesota, 334 F.Supp. 1001 (D. Minn. 1971), relative to the issue of Minnesota Chippewa reservation boundaries. There, the court considered the issue of whether the Nelson Act diminished the Leech Lake Reservation. The court, finding that Congress did not use express language of termination in the Nelson Act, held that the Act did not terminate or diminish the Leech Lake Reservation - one of the five reservations, which like the Mille Lacs Reservation, were subject to surplus land cessions pursuant to the Nelson Act. Indeed, the court's holding here is in harmony with Solem and the 1991 opinion of the Department of Interior, Office of the Solicitor; and, therefore, provides further support for the proposition that the Mille Lacs Reservation was not extinguished by the Nelson Act.

In your letter of September 23, 1998, you also advise that you have had trouble reaching Ms. Janice Zschokke of the Bureau of Indian Affairs ("BIA"). I have contacted Ms. Zschokke in an effort to assist you. I am confident that Ms. Zschokke, or another BIA official, will respond to your inquiries shortly. In the meantime, if you have any questions regarding this letter, please do not hesitate to contact me directly at (312) 886-6721.

Sincerely yours,



Richard M. Murawski
Assistant Regional Counsel

Attachment